

The Board has adopted the same stipulations and considered the same record as did the ALJ, consisting of the transcript of Post-Award and Preliminary Hearing dated December 20, 2007, with exhibits attached; the transcript of Post-Award Application Hearing dated December 23, 2008, with exhibits attached; the transcript of Preliminary Hearing dated March 25, 2010, with exhibits attached; the transcript of Preliminary Hearing dated September 27, 2012, with exhibits attached; the transcript of Post-Award Hearing dated December 19, 2013; and the transcript of Post-Award hearing dated April 1, 2014, with exhibit attached, and the documents of record filed with the Division.

ISSUES

The ALJ ordered respondent to furnish transportation to claimant for her appointments with the authorized treating physician.

The respondent requests review of the Post-Award Medical order arguing the ALJ exceeded his jurisdiction and authority in granting the benefits.

Claimant argues the Order of the ALJ should be affirmed.

FINDINGS OF FACT

This matter came before the ALJ based upon claimant's post-award request for transportation to a doctor in Kansas City. The ALJ and the parties agreed that this was a post-award matter brought pursuant to K.S.A. 2007 Supp. 44-510k, and not a preliminary hearing matter. However, a review of the Division file fails to find that an award has ever been reached, either by the ALJ, or by an agreement of the parties, in this matter.

PRINCIPLES OF LAW AND ANALYSIS

K.S.A. 2007 Supp. 44-510k(a) states:

(a) At any time after the entry of an award for compensation, the employee may make application for a hearing, in such form as the director may require for the furnishing of medical treatment. Such post-award hearing shall be held by the assigned administrative law judge, in any county designated by the administrative law judge, and the judge shall conduct the hearing as provided in K.S.A. 44-523 and amendments thereto. The administrative law judge can make an award for further medical care if the administrative law judge finds that the care is necessary to cure or relieve the effects of the accidental injury which was the subject of the underlying award. No post-award benefits shall be ordered without giving all parties to the award the opportunity to present evidence, including taking testimony on any disputed matters. A finding with regard to a disputed issue shall be subject to a full review by the board under subsection (b) of K.S.A. 44-551 and amendments thereto. Any action of the board pursuant to post-award orders shall be subject to review under K.S.A. 44-556 and amendments thereto.

The most fundamental rule of statutory construction is that the intent of the legislature govern if that intent can be ascertained.¹ When a workers compensation statute

¹ *Bergstrom v. Spears Manufacturing Company*, 289 Kan. 605, 214 P.3d 676 (2009).

is plain and unambiguous, the court must give effect to its express language rather than determine what the law should or should not be.²

The language of K.S.A. 2007 Supp. 44-510k is clear. A post-award matter is properly brought “any time after the entry of an award.” There has been no award entered in this matter, either by the ALJ or by agreement of the parties. Therefore, the ALJ had no jurisdiction to award benefits post-award. As the ALJ had no jurisdiction to award benefits post-award, the Board has no authority to do anything but vacate the Order of the ALJ and dismiss this appeal.

By statute, the above preliminary hearing findings and conclusions are neither final nor binding as they may be modified upon a full hearing of the claim.³ Moreover, this review of a preliminary hearing Order has been determined by only one Board Member, as permitted by K.S.A. 2013 Supp. 44-551(l)(2)(A), unlike appeals of final orders, which are considered by all five members of the Board.

CONCLUSIONS

After reviewing the record compiled to date, the undersigned Board Member concludes the preliminary hearing Order should be vacated and the appeal of respondent dismissed.

DECISION

WHEREFORE, it is the finding, decision and order of the undersigned Board Member that the Order of Administrative Law Judge John D. Clark dated May 5, 2014, is vacated and the appeal by respondent is dismissed.

² *Graham v. Dokter Trucking Group*, 284 Kan. 547, 161 P.3d 695 (2007).

³ K.S.A. 2013 Supp. 44-534a.

IT IS SO ORDERED.

Dated this _____ day of July, 2014.

HONORABLE GARY M. KORTE
BOARD MEMBER

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John D. Clark, Administrative Law Judge